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Alan Ridley  
Planning Inspectorate  
4/02 Kite Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Our Ref:CVH/HAR

24 June 2011

Dear Mr Ridley,

**Re: Town and Country Planning Act 1990  
Appeals by Paul Newman New Homes and Mr Paul Newman.  
Site at Land at Valley Farm, Soulbury, Leighton Buzzard, LU7 0JJ, Land at  
Derwent Road, Linslade, Leighton Linslade and Land at Valley Farm,  
Soulbury, Leighton Buzzard**

Appeal ref APP/J0405/A/10/2143343/NWF.

Further appeal references:- APP/P0240/A/10/2143323, APP/J0405/A/11/2154252  
and  
APP/P0240/A/11/2154254

We are instructed by South Bedfordshire Friends of the Earth (S. Beds FoE) to address the Inspector in writing on various matters relating to biodiversity concerns arising from the above-mentioned planning applications now subject to appeal. We set out these matters below.

### **Planning Context.**

The third reason for refusal stated by Aylesbury Vale District Council (AVDC) in August 2010 to the above-mentioned applications was that:

” The proposals conflict with the advice in PPS9 in that they fail to provide adequate mitigation measures to deal with any adverse biodiversity impacts arising from the case”.

In a further Report this spring (2011) to update the Members of AVDC on progress since the decision to refuse planning permission, AVDC has decided to continue to defend this reason at the forthcoming Public Inquiry as follows;

*paragraph 2.15 "The previous report at paragraphs 9.24 to 9.26 sets out the harm that would arise to biodiversity and ecology as a consequence of the development. The council's ecologist has recently met with the appellants Ecological Consultant to discuss the issues identified but has not been able to agree measures that would adequately mitigate or compensate for the harm that would arise. It is therefore considered that the council should continue to defend the third reason for refusal.*

Whilst we concur with these reasons for refusal, and support such, we remain concerned that, although PPS9 has been referenced in support, potentially significant legal implications arising from consideration of both the Habitats Regulations 2010 and the Environmental Impact Assessment Regulations 1999 have not been adequately addressed by Aylesbury Vale DC.

### **South Bedfordshire Friends of the Earth (FoE) Reports.**

South Beds FoE have commissioned 3 expert reports on biodiversity issues relating to these planning applications: (These reports are contained in the Appendices to the Proof of Evidence of Dr Rowlands, PN10 as Appendices 16, 17 and 18); and in a previous criminal case a report commissioned by Bindmans Solicitors for Victoria Harvey Coordinator of South Bedfordshire Friends of the Earth. (This document is appended to this letter.)

### **Review of Environmental statement of West Linslade Urban extension in relations to Bats. (Chiroptera) 2009.**

A report prepared for South Bedfordshire Friend of the Earth by Ian Davidson-Watts PhD, HND (Distinction), MIEEM, MIBiol, C.Biol..Mr Davidson Watts was formerly Head of Protected Species Licensing (2000-2002) for English Nature, now Natural England, and was latterly employed by the Ministry of Defence (MOD) as Head of Environment Department for the Sovereign Base Areas Administration of Cyprus.

The conclusions of this review were;

*4.1 The West Linslade Urban Extension is situated in an area of potential significance for bat species.*

*4.2 The ES and ecological studies supporting the proposals highlight the potential risk to bats from the development. However, as the best practice guidelines to survey bats on such sites were not adhered to, the application fails to provide a sufficiently robust dataset to demonstrate that important bat populations will not be adversely affected by the proposals. This is due to the limited data contained within the ecological study to support the assessment of effects.*

*4.3 The mitigation measures proposed to reduce any risk to bats essentially involve further survey to investigate adjacent habitats with the potential to support bats and should not be considered effective or legally enforceable under planning or wildlife*

*law. All information relating to potential impacts on a material consideration such as protected species should be obtained prior to the granting of planning permission.*

*4.4 Legal and policy obligations under the Environmental Impact Assessment Regulations, the Habitats Directive, national planning policy and local planning policy require the local planning authority to refuse planning permission for this proposal as*

*i) the proposals have the potential to adversely affect important bat populations,*

*ii) the ES does not does not outline the extent to which these bat populations will be affected and,*

*iii) there is no evidence to support the effectiveness of any of the proposed mitigation measures.*

**Report by Ian Davidson Watts for Martin Rackstraw of Bindman Solicitors  
Linslade Western Bypass criminal case - Aylesbury Magistrates Court R v  
Victoria Harvey and Rebecca Lush March 2005**

This report looked at proposals for the Linslade Western Bypass in particular the area by Valley Farm Fen as regards the impacts of Bats, protected species under the Conservation (Habitats etc) Regulations and the Wildlife and Countryside Act.

*1.1 I have been asked to examine a range of material relating to the development proposals associated with the A4146 Stoke Hammond and Linslade Western Bypass and impacts on bats and their roosts.*

*1.2 In particular I have been asked to consider whether;*

- bats or their roosts were affected by the road scheme and were the bat surveys undertaken sufficient to meet legal obligations relating to bats and development activities*
- Buckinghamshire County Council had carried out its legal duties relating to bats and their habitats in determining the planning application for this scheme*
- any offences or attempted offences under the Wildlife and Countryside Act 1981 (as amended) and the Conservation (Natural Habitats & C.) Regulations 1994 could have been committed against bats by the commencement of construction works on the 19 January 2005.*

This report concluded that;

*5.1 At the point construction worked commenced on the 19<sup>th</sup> July 2005 a number of facts had been established. Firstly bats and their roosts had been identified as a potential issue since 1994. Yet, up to an including 2003, insufficient survey work, using very limited methods for surveying bats in trees, had been carried out to determine whether legally protected bat roosts were affected by the road scheme. Secondly, in 2004, survey work, which was partly sufficient in methods (although other areas and other times of the year needed to be surveyed), clearly identified a number of bat roosts affected by the scheme. Thirdly from the evidence available,*

*none of the bat reports or the ES actually carries out a comprehensive impact assessment of the construction works on bats. Including whether there will be issues from direct impacts, such a roost damage or destruction and disturbance, killing and injuring of bats. Or whether there will be indirect impacts from the construction and after use of the road scheme, such as affects of lighting, noise, dust etc disturbing bats in nearby roosts.*

*5.2 As a consequence of insufficient survey work and insufficient impact assessment relating to bats and this road scheme, it has not been possible to establish a clear plan from which the construction activities can avoid damaging or destroying bat roosts, or disturbing bats within roosts directly or indirectly affected by the scheme.*

*5.3 Therefore on the basis of the evidence of bat roosts being affected by the construction of the road scheme (2004 Report) and the lack of measures to consider/assess/avoid these impacts, I consider that offences relating to bats and their roosts from the commencement of construction works cannot be ruled out.*

South Beds Friends of the Earth is concerned that this area of Valley Farm Fen is important for species protected under the EU Habitats Directive and that proper surveys and mitigation were not taken with respect to the Linslade Western Bypass. Therefore it is crucial that the cumulative effects of the Linslade Western Bypass in conjunction with this Appeal for 900 houses are properly assessed in order to ensure compliance with the requirements of Article 2,2 of the Habitats Directive, namely, that

*“ Measures taken pursuant to this directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species, of wild fauna and flora of Community Interest”*

**Ecological Assessment of the area by Philip Irving 2009,**

who has worked as an ecologist for over ten years providing ecological advice on the management of nature reserves and other wildlife sites, writing management plans and undertaking habitat and protected species surveys. He works for the Greensand Trust who manage many of the wildlife/ country park/ green-infrastructure in the area for Central Bedfordshire, and other similar organisations.

His Assessment concludes;

- *Valley Farm contains a range of nationally and locally important BAP habitats including lowland fen, lowland meadow, wet woodland and hedgerows. The fen is identified as a County Wildlife Site and could be considered to be of sufficient nature conservation interest for it to be considered for designation as a Site of Special Scientific Interest (SSSI). Some of the grassland at the farm is also likely to be of sufficient interest to be considered to be at least of CWS value.*
- *The development would lead to the direct loss of areas of species rich Lowland Meadow which is in direct opposition to one of the targets in the UK Biodiversity Action Plan for this habitat.*
- *There appears to be no information on the hydrological impacts of the development on Valley Farm Fen CWS and there are no apparent mitigation measures to protect it from possible changes in the water table as a result of it.*

## **Report on the Proposed West Linslade Urban Extension (WLUE) - An Assessment of the Role of Valley Farm in Local Biodiversity and Green Infrastructure Networks by Philip Irving. 2009.**

A separate Report by Mr Irving concludes;

*From the map at the end of the document, it can be seen that Valley Farm acts as an important link in a circle of Green Infrastructure that surrounds Linslade and extends outwards to link up with additional areas to the north and south of the town, providing both valuable wildlife corridors and existing or potential public open space and access routes.*

*The loss of much of Valley Farm to housing would create a major break in this circle of Green Infrastructure, with the urban area of Linslade effectively intruding into the green ring around the town. This would result in fragmentation of the network of habitats described above, resulting in the less mobile species (e.g. plants and some invertebrates) becoming isolated and at greater risk of local extinction. Though areas of green space could be retained within the proposed development, these would be a poor replacement for the existing area, and what remained would most likely be of lesser value, in terms of biodiversity, landscape and access. There is potential for new Green Infrastructure on the farmland to the west of the Linslade Western Bypass, though the road acts as a major barrier to wildlife, with access also restricted to a couple of crossing points.*

*Developments such as that proposed for this area can also have wider implications. As an example of this, increased run-off resulting from the development will enter the River Ouzel, and in turn, the Great Ouse river system, via the stream at the base of the side valley in which Valley Farm is located. In times of high rainfall the collective effect of increased run-off from sites such as this throughout the entire river system could exacerbate flooding of nationally important sites such as the Ouse Washes SAC.*

### **Main Issues.**

#### **Failure to comply with the Environmental Impact Assessment Regulations 1999.**

(Extracts taken from Ian Davidson Watts' Report for the Linslade western bypass criminal case - Aylesbury Magistrates Court R v Victoria Harvey and Rebecca Lush March 2005

. *The Environmental Impact Assessment Regulations 1999 (Regulation 3), also places obligations on Local Planning Authorities with respect to Environmental information in that;*

*(2) The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission pursuant to an application to which this regulation applies unless they have first taken the environmental information*

*into consideration, and they shall state in their decision that they have done so.*

*In October 1999 Cornwall County Council granted planning permission to County Environmental Services (CES), a company wholly owned by the Council, to extend the largest landfill site in Cornwall. The site had been the focus of widespread public opposition for a number of years as a result of continued environmental pollution from the site, damage to a proposed World Heritage Site, and adverse impacts on protected species in the area.*

*Following the grant of planning permission, which would have extended the period of tipping by a further 10 years, a challenge to the permission was undertaken through judicial review proceedings against the County Council.*

*It was argued in the High Court that the Council had acted illegally in that they had failed to adequately survey the site for protected species, which was required by the Environmental Impact Assessment Regulations and the EU Directive. The Council (Cornwall County Council) argued that detailed surveys of flora and fauna could be dealt with by way of Section 106 Conditions following the grant of permission, a common practice with planning authorities.*

*Such surveys by way of conditions however would have the effect of excluding the public from participating in the process of environmental assessment, thus defeating the purpose of the Directive and the Regulations*

*Mr Justice Harrison concluding that;*

*"...the grant of planning permission in this case was not lawful because the respondent could not rationally conclude that there were no significant nature conservation effects until they had the data from the surveys. They were not in a position to know whether they had the full environmental information required by Regulation 3 before granting planning permission." R v Cornwall County Council, ex parte Hardy [2001] Env LR*

In summary, whilst DEFRA issue the formal derogation from the provisions outlined in Article 12 of the Habitat Directive (in the form of a licence issued under Regulation 44), Local Planning Authorities still have a legal undertaking under the Habitats Regulations 1994 and the Environmental Impact Assessment Regulations 1999. This legislation requires LPAs to fully consider European Protected Species (such as bats) whilst determining planning applications. This is an important issue, as the LPA may grant planning permission for a scheme that impacts on a protected species without adequate information, only to find that due to the rarity of the species concerned or the failure of one of the legal tests outlined above, DEFRA are unable to issue a licence.

According to Ian Davidson Watts' recent report of 2009 the surveys by Paul Newman were inadequate in that; 2.2.2 *"In summary field surveys for the ES of the proposed urban extension consisted of two bat detector surveys for foraging and commuting bats and two emergence surveys of bats suspected to be in buildings on the site in July 2008. Both surveys were carried out simultaneously using six*

*surveyors. A single day time assessment of the entire site was also undertaken to consider potential foraging areas and roost sites.”*

These surveys were inadequate as there were no dawn emergence surveys and there was no access to one of the buildings. Such surveys should be undertaken at intervals between May and August as bats change roost from maternity roosts in the spring/ early summer to mating roosts in the summer. *“The BCT survey guidelines recommend that at least 2/3 surveys are undertaken between May and August, with an optimum period of June to August, but the guidelines add that best practice is to space the surveys evenly throughout the period and include at least one dawn survey.”* para 2.2.3

This does not comply with good practice guidelines as set out in the guide produced by the Bat Conservation Trust (2007) entitled ‘Bat Surveys’ – Good Practice Guidelines’ (BCT 2007). These guidelines have been produced in collaboration with the UK’s statutory nature conservation agencies e.g. Natural England, and are currently considered to reflect best practice.”

According to Ian Davidson Watts in para 2.2.32. the surveys were inadequate as;  
*a) Insufficient surveyors were used as six surveyors would have been required.*

*Although six surveyors were quoted in the report for each survey, two of these surveyors were utilised for simultaneous emergence surveys.*

*Therefore there was insufficient coverage of the site during the first two hours of the bat detector surveys. This is an optimum time for bat commuting and foraging as this period coincides with the greatest density of insects (Bullock et al 1987).*

*b) The two bat detector surveys were both undertaken in July and these surveys were only 11 days apart. This approach has not spread the survey effort throughout either the active season or the optimal period (June to August) as recommended by the BCT guidelines. Bat behaviour in the landscape changes throughout the year and even from month to month, depending on the availability of insect prey and the breeding status of bats. For instance studies of Pipistrelle bats in southern England (Davidson-Watts in prep) showed that roost switching would take place just after giving birth (June/July) to enable access to better foraging grounds during this energy demanding stage in their life cycle. Activity within a variety of habitats is also known to change seasonally. In addition to this the survey effort associated with the ES in no way takes account of the commencement of the mating season in August, where male bats of certain species become highly conspicuous through behaviour such as song flighting (Park et al 1996) to attract females. Surveying during this time of year often leads to the discovery of mating roosts.*

*c) The duration of the surveys were also insufficient in that a dawn survey was not undertaken in line with the BCT guidelines.*

*d) The assessment of trees in relation to bats does not have a method statement and in addition a climbing survey of all potential bat roosts in trees should have been undertaken, as tree roosts are the most difficult of all bat roost to detect.*

*2.2.4 In line with the issues outlined above, the emergence surveys of the buildings directly affected by the proposed urban extension were also insufficient in that they have not taken account of the temporal aspects of bat behaviour. This is particularly relevant to the property where access was limited, as other signs of bat internally such as droppings could not be detected."*

The ecologists for Paul Newman Homes submitted Ecological baseline surveys in March 2011.

Further survey work has been undertaken, but nevertheless fails to comply with the best practice guidelines as set out by Mr Davidson Watts in his 2009 report for South Bedfordshire Friends of the Earth.

Mr Davidson Watts explains the importance of surveys spaced evenly between May and August and that this is explained in the BCT guidelines para 2.2.2 of IDW report 2009.. He further explains in 2.2.3 b) that Pipistrelles change roosts from Maternity roosts in June July to mating roosts in August. So surveying just in August could mean that important maternity roosts might not be detected. The surveys done for the buildings took place only in August and September and the *"transect surveys to assess the level of bat foraging /commuting within the site"* (ecological baseline surveys paragraph 3.39-3.43 were only done in August.

These transect surveys do not take account of the potential importance of Linslade Wood and Liscombe Park for bat species and the surveyors are apparently unaware that adverse impacts on foraging grounds could impair the ability of bats to survive as required by Habitats Regulation 2010 S.41 (2)(a)(i), and consequently DEFRA licences could be required in this respect.

The mitigation proposed in 3.43 of the Ecological Baseline Survey which states, *"The indicative master plan submitted with the planning application aims to retain and enhance a large proportion of the key foraging habitats for bats."* This does not deal with the impacts of disturbance during construction and the effects of lighting upon bats and their roosts. This does not provide an adequate and robust mitigation plan so that a licence can be granted. It is laid out in section 41 (9) of the Habitats Regulations 2010 that a licence can only be granted *"if the action will not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range."*

Some of the species listed in the Ecological Baseline Survey have an unknown conservation status as listed by the JNCC Report to Europe on the Habitats Directive. This is supported by Mr Davidson Watts's evidence in paragraph 3.1.10 This means that considerable detail and mitigation plans need to be submitted to the authority in order that it can be assured that granting a licence will not be contrary to S.41(9) of the Regulations to avoid harm to the overall population status of bats in the area - ie the Favourable Conservation Status.

Mr Davidson Watts states in paragraph 2.2.3 that a climbing survey of all potential bat roosts in trees should take place as these are the most difficult to identify. Climbing surveys have not taken place. The trees have merely been assessed from the ground.

Paragraph 3.36 of the EBS states that if any roosts are discovered then a licence will need to be applied for and sufficient replacement roosting habitat would be needed. Were this to not be possible a licence could not be granted.

### **Habitats Directive and Regulations.**

Local authorities have a duty to have regard to The Conservation of Habitats and Species Regulations 2010.

Exercise of functions in accordance with the Habitats Directive Section 9.

*(1) The appropriate authority and the nature conservation bodies must exercise their functions under the enactments relating to nature conservation so as to secure compliance with the requirements of the Habitats Directive.*

Section 41 of the 2010 Regulations is the most relevant in this instance. It states;

*41.—(1) A person who—*

*(a)deliberately captures, injures or kills any wild animal of a European protected species,*

*(b)deliberately disturbs wild animals of any such species,*

*(c)deliberately takes or destroys the eggs of such an animal, or*

*(d)damages or destroys a breeding site or resting place of such an animal,*

*is guilty of an offence.*

*(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—*

*(a)to impair their ability—*

*(i)to survive, to breed or reproduce, or to rear or nurture their young, or*

*(ii)in the case of animals of a hibernating or migratory species, to hibernate or migrate; or*

*(b)to affect significantly the local distribution or abundance of the species to which they belong.*

*9) The relevant licensing body must not grant a licence under this regulation unless they are satisfied—*

*(a)that there is no satisfactory alternative; and*

*(b)that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*

## Environmental Statement (ES) and bats.

Likely bat roosts.- The evidence to date shows that there is one identified bat roost and that are very likely to be more roosts on the site. Paragraph 3.33 of the Ecological Baseline Surveys and the ES reports for the Linslade Western Bypass 2002 show that Natters bats were using the tree roosts in the vicinity off the proposed Urban Extension site. ( IDW 2.32). According to the Report by Mr Davidson Watts in 2009 it is very likely that this area has significance to the wider area of Linslade Wood and Liscombe Park and that consequently disturbance in this area could impact on the populations of bats in these areas.

The report of Mr Davidson Watts also highlights that this area is dominated with habitats that are known to be good habitats for bats.(para 2.2.1)

Artificial lighting can potentially cause significant disturbance to bats, which could constitute an offence under S.41 of the Habitats Regulations 2010. This aspect of the scheme has not been assessed in the ES. The ES merely states at para 8.74 *“Illumination within the site will be designed along the subsequent detailed stages, ( reserved matters) and will be installed in a sensitive manner using directional lighting.”*

Research undertaken done at Bristol University, by Emma Louise Stone, Gareth Jones and Stephen Harris, School of Biological Sciences, University of Bristol, Woodland Road, Bristol BS8 1UG, UK, (see Current Biology July 14<sup>th</sup> 2009) highlights the damaging effect of lighting on bat species.

In summary, the Report states;

*“Anthropogenic disturbance is a major cause of worldwide declines in biodiversity . Understanding the implications of this disturbance for species and populations is crucial for conservation biologists wishing to mitigate negative effects. Anthropogenic light pollution is an increasing global problem , affecting ecological interactions across a range of taxa and impacting negatively upon critical animal behaviours including foraging, reproduction, and communication (for review see and ).*

*Almost all bats are nocturnal , making them ideal subjects for testing the effects of light pollution. Previous studies have shown that bat species adapted to foraging in open environments feed on insects attracted to mercury vapour lamps. Here, we use an experimental approach to provide the first evidence of a negative effect of artificial light pollution on the commuting behaviour of a threatened bat species. We installed high-pressure sodium lights that mimic the intensity and light spectra of street-lights along commuting routes of lesser horseshoe bats (Rhinolophus hipposideros). Bat activity was reduced dramatically and the onset of commuting behaviour was delayed in the presence of lighting, with no evidence of habituation. These results demonstrate that light pollution may have significant negative impacts upon the selection of flight routes by bats.*

[http://www.cell.com/current-biology/abstract/S0960-9822\(09\)01193-2](http://www.cell.com/current-biology/abstract/S0960-9822(09)01193-2)

## Bats

Natural England's response to the second planning application dated 1 April 2010 in respect of bats is unsatisfactory in that:

The bat survey undertaken (as summarised in Chapter 8 of the *Environmental Statement*) found: *"small numbers of 6 bat species using the site for foraging and commuting with the potential for some roosting within mature trees; although no roosting was recorded within any of the buildings at the site"*. Although no bat roosts were found within the proposal site, if any bats are found during the demolition or construction phases of the development (particularly with regards to any demolition of the existing buildings on site) then work should stop immediately and a Natural England bat license sought. In addition, illumination within the Site should be installed in a sensitive matter using directional lighting (para.8.74).

Although this has come to be the standard response of NE in respect of European Protected Species (EPS), it is highly questionable whether it meets the in-combination requirements of the EIA Regulations and the Habitats Regulations. In any event, consideration should be given prior to any grant of planning permission, and certainly before any site work commences, as to whether the derogation criteria can be fully satisfied.

This view has been recently endorsed by the Supreme Court in *Morge v Hampshire County Council* [2011] UKSC 2. Lord Brown in the leading judgement stated at para 29;

*"I cannot see why a planning permission...should not ordinarily be granted save only in cases where the Planning Committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers."*

In this instance no consideration would appear to have been given to either the requirements of article 12 or the licensing criteria.

In addition, the ES has not considered the wider impacts of the development on the bat populations of Linslade Wood, adjacent woodland (part of it classified as Ancient Woodland) and on Liscombe Park. The loss of these areas for foraging has the potential to adversely affect the ability of bat species and roosts to "survive" as set out in S. 41 (2) (l) of the 2010 Regulations. This has not been assessed.

The ES has also apparently failed to consider the cumulative or in-combination effects of the development proposal when placed in the context of the Linslade Western By-pass. Schedule 4, Part 2 para 3 of the 1999 Regulations requires at the very least a description of the significant likely effects of the development in respect of, inter alia, cumulative effects. This does not appear to have been considered in the ES.

### **Other biodiversity concerns.**

Valley Farm Fen plays a major role in a green corridor according to the expert report of Mr Irving. *"From the map at the end of the document, it can be seen that Valley Farm acts as an important link in a circle of Green Infrastructure that surrounds Linslade and extends outwards to link up with additional areas*

*to the north and south of the town, providing both valuable wildlife corridors and existing or potential public open space and access routes.”*

Article 10 of the Habitats Directive states that; *“ Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.*

*Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.*

South Beds FoE submitted a letter from Earthrights Solicitors dated 19 March 2009 as part of the consultation process on the South East Plan (SEP) in response to the Secretary of State's proposed changes.

They were concerned that development in this area would be contrary to NRM5 in the SEP which protects County Wildlife sites. Policy NRM5 4 ii, which addresses Conservation and Improvement of Biodiversity, states:

*“...seeking to ensure that damage to county wildlife sites and locally important wildlife and geological sites is avoided, including areas outside the boundaries of Natura 2000 sites where these support the species for which that site has been designated.”*

The SEP remains a material planning consideration following a recent Appeal Court judgement (see Cala Homes), until such time as the RSSs are abolished.

Although its weight will diminish during the progress of the Localism Bill, the Government White Paper “The Natural Choice, Securing the value of Nature” shows continued support for biodiversity interests. Relevant extracts are set out below;

*“ 4.28 The Government will establish a Green Infrastructure Partnership to support the development of green infrastructure in England. This will consider how green infrastructure can be enhanced to strengthen ecological networks and improve communities’ health, quality of life and resilience to climate change.”*

*“2.35 We need a more strategic and integrated approach to planning for nature within and across local areas, one that guides development to the best locations, encourages greener design and enables development to enhance natural networks for the benefit of people and the environment as part of sustainable development.*

***We will retain protection and improvement of the natural environment as core objectives for local planning and development management. The planning system will continue to facilitate coherent and resilient ecological networks in association with local partners and reflect the value of natural systems. We want the planning system to contribute to our objective of no net loss of biodiversity;***

*to encourage local authorities to promote multi-functional development so that we get the most from land; and to protect our best and most versatile agricultural land.”*

The letter from EarthRights Solicitors also raises concerns relating to the NERC Act 2006. A copy of the letter is appended to this letter.

**Conclusion.**

In summary, S Beds FoE have well founded concerns over the survey work undertaken in the ES in respect of a European Protected Species (EPS), namely, bats. As a consequence there is a very real risk that the significant likely effects of the proposed development on these species have been underestimated, and that the mitigation proposed will be inadequate.

Further, no full consideration appears to have been given to the requirements of the Habitats Regulations 2010 as regards the criteria for derogation from the system of strict protection afforded to bats, and there is a further risk that, absent this consideration, a breach of the Regulations may occur were planning permission to be granted for this proposed development.

Finally, we are advised that since the above was drafted Proofs of Evidence have been exchanged, and that the Ecology Proof submitted on behalf of the Appellants addresses a number of issues previously raised by S Beds FoE and reiterated here. We would be grateful to be afforded reasonable time to consider matters arising in that Proof and will revert to you with any comments during the course of next week. We trust that this will be acceptable.

Yours sincerely,

CHARLIE HOPKINS M.A.(Oxon) Dip Law

Planning & Environmental Consultant